Attorney Docket No. 509/41775
PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s):	Kevin B. Root *et al.*	Conf. No.:	5341
U.S. Serial No.:	10/694,983	Art Unit:	3683
Filed:	October 29, 2003	Examiner:	Siconolfi, Robert
For:	INTEGRATED TRAIN ELECTRICAL AND PNEUMATIC BRAKES		

AMENDMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the official Office Action dated November 17, 2004, Applicants hereby amended the specification and claims as shown in the attachments.

REMARKS

In response to official Office Action dated November 17, 2004, Applicant provides the following remarks:

In the official Office Action dated November 17, 2004, Claims 1 and 2 are rejected under 35 U.S.C. § 135(b) as not being made prior to one year from the date on U.S. Patent 6,435,624. This was based on *In re McGrew*, 120 F.3d 1236, 43 USPQ2d 1632 (Fed. Cir. 1997).

Paragraph 2 indicates that Claims 1 and 2 of this application are asserted by the Applicant to correspond to claims of U.S. Patent 6,435,624, but the Examiner disagrees. If the Examiner believes they are not directed to the same invention, then there can be no rejection under 35 U.S.C. § 135(b). The court in *In re McGrew* specifically said: "McGrew argues that the statute is inapplicable *in the ex parte context,* citing *In re Sasse* for its statement that section 135(b) applies only to interference proceedings and cannot be used by the PTO as a ground for an ex parte rejection. However, this was not the sole reason in *Sasse* for reversing the section 135(b) rejection. We also reversed the section 135(b) rejection in *Sasse* because the applicant in that case was not claiming 'the same or substantially the same subject matter as, a claim of an issued patent.'" 43 USPQ2d 1632, 1634.